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2 **LES ZIEVE, ESQ.**
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8 Counsel for Objecting Secured Creditor,
9 Franklin Credit Management Corporation

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 In re

14 Margarita Munoz,

15 Debtor.

) Case No. 08-53270

) **OBJECTION TO CONFIRMATION OF**
) **CHAPTER 13 PLAN**

) 341 Meeting:

) Date: June 18, 2009

) Time: 2:00 p.m.

) Place: San Jose Courtroom 3099

) 280 South First Street,

) San Jose, CA 95113-3002

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21 In support of the foregoing Objection, Franklin Credit Management Corporation
22 (hereinafter "FCMC"), alleges as follows:

23 1. FCMC is the loan servicing agent on behalf of the holder of the **second** deed of
24 trust on the Debtor's real property located at 4619 Thornhaven Way, San Jose, California.

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26 **THE DEBTOR HAS INSUFFICIENT EXCESS INCOME TO FUND HER PLAN**

27 2. The Debtor has no excess monthly income. The Debtor has committed nearly
28 all of her purported excess income to her Plan over 52 months. Her proposed Plan payment is

1 \$300.00 for all 52 months and her monthly net income is \$300.00. True copies of the Debtor's
2 Schedules "I" and "J" are attached hereto as Exhibit "1". Her claimed income is at best dubious as
3 the debtor lists \$3,700.00 per month in "income from operation of business" and \$2,000.00 in
4 contribution from "expected roommate". She lists no deductions for Federal or State income taxes or
5 for self-employment taxes. Self-employment taxes alone (which are not subject to elimination by
6 deductions) on \$3,700.00 would total at least \$569.00 per month, thereby eating up all of the Debtor's
7 purported excess monthly income and leaving a deficit of at least \$269.00. Furthermore, it is
8 extraordinarily unlikely that the Debtor has NO Federal or State income tax liability on her self-
9 employment income. Furthermore, the debtor has filed no evidence supporting her contention that
10 her speculative and prospective tenant has either the ability or intent to contribute \$2,000.00 per
11 month for 52 months.

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13 INABILITY TO FUND A FEASIBLE PLAN

14 3. Based on the above, it is clear that this Debtor filed this case in bad faith and does not
15 have the intent or ability to comply with the requirements of the Code.

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1 WHEREFORE, FCMC prays as follows:

2 1. That this case be dismissed forthwith with a 180 day bar against refiling.

3 2. That confirmation of the Plan be conditioned upon the Debtor providing this creditor and
4 the Court with verified evidence supporting her contentions set forth in Schedules "T" and "J",
5 including evidence that the Debtor's prospective tenant has the ability and intent to make a \$2,000.00
6 monthly contribution to the Plan.

7 3. For such further relief as the Court deems appropriate.

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9 DATED: April 23, 2009

Respectfully submitted,

10 LAW OFFICES OF LES ZIEVE

11 /s/ Les Zieve

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13 By: LES ZIEVE
14 Counsel for Objecting Secured
15 Creditor: Franklin Credit Management Corp.
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SCHEDULE I -- CURRENT INCOME OF INDIVIDUAL DEBTORS

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

The marital status of the debtor(s) is: **unmarried**

DEPENDENTS OF DEBTOR AND SPOUSE

Name	Age	Relationship	Monthly Support	
			Paid by Debtor(s)	Received by Debtor(s)
None				

EMPLOYMENT

	Debtor	Spouse
Occupation	Childcare Provider	
How long employed	2 yrs	
Name of Employer	Self-employed	
Employer's Address	at residence	

INCOME: (Estimate of average or projected monthly income at time case filed)

	Debtor	Spouse
GROSS EMPLOYMENT INCOME		
1. Monthly gross wages, salary, and commissions (prorate if not paid monthly)		
2. Estimate monthly overtime		
3. SUBTOTAL	0	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security		
b. Insurance		
c. Union dues		
d. Other		
(Specify):		
5. SUBTOTAL OF PAYROLL DEDUCTIONS		
6. TOTAL NET MONTHLY TAKE HOME PAY		
OTHER SOURCES OF INCOME		
7. Regular income from operation of business, profession, or farm (attach detailed statement)	3,700	
8. Income from real property		
9. Interest and dividends		
10. Alimony, maintenance or support paid to debtor for support and for listed dependents		
11. Social security or government assistance		
(Specify)		
12. Pension or retirement income		
13. Expected 4Cs food reimb	350	
Expected roommate	2,000	
14. SUBTOTAL OF LINES 7 THROUGH 13	6,050	
15. AVERAGE MONTHLY INCOME (Add amounts on lines 6 and 14)	6,050	
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15) (Report also on Summary of Schedules)		6,050
Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document.		

SCHEDULE J -- CURRENT EXPENDITURES OF INDIVIDUAL DEBTORS

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. If so, complete the second column also.

	DEBTOR	SPOUSE (If separate)
1. Rent or home mortgage payment (include mobilehome space rent)	3,427	
a. Real estate taxes (not included above)	150	
b. Property insurance (not included above)	67	
2. Utilities		
a. Electricity and heat	170	
b. Water and sewer	70	
c. Telephone	12	
d. Other		
Internet Services	12	
Cable TV	29	
3. Home maintenance (repairs and upkeep)		
4. Food and home supplies	575	
5. Clothing	80	
6. Laundry and dry cleaning	73	
7. Medical and dental	10	
8. Transportation (not including car payment)	600	
9. Recreation, clubs and entertainment, Newspapers and magazines		
10. Charitable contributions		
11. Insurance (not deducted from wages or included in home mortgage payments):		
a. Homeowner's or renter's		
b. Life		
c. Health		
d. Auto	25	
e. Other		
12. Taxes (not deducted from wages or included above) Specify:		
13. Installment payments: (In chapter 11, 12 or 13 do not list payments included in the plan)		
a. Auto		
b. Other:		
c. Other:		
14. Alimony, maintenance, and support paid to others		
15. Other support (specify):		
16. Regular expenses of business, profession, or farm	450	
17. Other expenses (specify):		
TOTAL THIS COLUMN	5,750	
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report on Summary of Schedules)		5,750
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I		6,050
b. Average monthly expenses from Line 18 above		5,750
c. Monthly net income (a. minus b.)		300

ATTACHMENT TO SCHEDULE J -- EXPENSES OF BUSINESS

Margie's Heavenly Licensed Provider Childcare	
Rent	
Utilities	
Power	
Water and Garbage	
Telephone	
Internet Services	
Toxic Disposal	
Other	
Insurance	
Workers Compensation	
Liability	
Vehicle	
Other	
Employee Payroll	
Contract Services	
Taxes	
Payroll	
Sales	
Other	
Cost of Goods	50
Advertising	
Transportation	50
Dues, Subscriptions, Education	
Client Entertainment	
Accounting and Professional Services	
Food for children's lunches	350
TOTAL MONTHLY EXPENSES FOR THIS BUSINESS	450